

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ANDREW CORZO, SIA HENRY, ALEXANDER LEO-
GUERRA, MICHAEL MAERLENDER, BRANDON
PIYEVSKY, BENJAMIN SHUMATE, BRITTANY
TATIANA WEAVER, and CAMERON WILLIAMS,
individually and on behalf of all others similarly situated,

Plaintiffs,

v.

BROWN UNIVERSITY, CALIFORNIA INSTITUTE
OF TECHNOLOGY, UNIVERSITY OF CHICAGO,
THE TRUSTEES OF COLUMBIA UNIVERSITY IN
THE CITY OF NEW YORK, CORNELL
UNIVERSITY, TRUSTEES OF DARTMOUTH
COLLEGE, DUKE UNIVERSITY, EMORY
UNIVERSITY, GEORGETOWN UNIVERSITY, THE
JOHNS HOPKINS UNIVERSITY, MASSACHUSETTS
INSTITUTE OF TECHNOLOGY, NORTHWESTERN
UNIVERSITY, UNIVERSITY OF NOTRE DAME DU
LAC, THE TRUSTEES OF THE UNIVERSITY OF
PENNSYLVANIA, WILLIAM MARSH RICE
UNIVERSITY, VANDERBILT UNIVERSITY, and
YALE UNIVERSITY,

Defendants.

Case No. 1:22-cv-00125

Hon. Matthew F. Kennelly

**PLAINTIFFS' OPPOSITION TO DEFENDANT PENN'S MOTION FOR LEAVE TO
RESPOND TO PLAINTIFFS' RESPONSE TO THE OBJECTIONS OF 37 DONOR-
RELATED STUDENTS TO THE PRODUCTION OF THEIR FERPA-PROTECTED
EDUCATION RECORDS**

Defendant The Trustees of the University of Pennsylvania ("Penn") has moved for leave to respond – *i.e.*, to file an unauthorized reply -- to Plaintiffs' Response to the Objections of 37 Donor-Related Students to the Production of Their FERPA-Protected Education Records, ECF 561

(“Plaintiffs’ Response”). For the following reasons, Penn’s motion should be denied; or, alternatively, the Court should reject the arguments in Penn’s proposed “Response”:

1. Penn has not told the Court that Plaintiffs offered to file a short pleading to explain why the statements in Plaintiffs’ Response were not (in Penn’s word) “baseless.” Instead, Penn gave Plaintiffs three hours to agree to let Penn file a new brief that was not permitted under the Court’s prior orders. *See* email correspondence attached as Ex. A, which sets forth in full Plaintiffs’ reasonable responses to Penn’s unreasonable demands.¹

2. Penn’s main complaint is that Plaintiffs made the following statements in their brief: (a) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Plaintiffs’ Response at 10 (emphases added).

3. Why did Plaintiffs use the qualifier “likely”? That is explained in Plaintiffs’ Response, n.13: “Because the Court allowed counsel for the objecting students to redact the names of those students before their letters were served on Plaintiffs’ counsel, Plaintiffs cannot state with certainty which of the . . . Penn students to whom FERPA notices were sent actually filed objections, and which did not. . . . Under these circumstances, Plaintiffs have made the reasonable deduction that students from the wealthy . . . Penn donor-families described above were ‘likely’ among those who hired counsel to assist in the preparation and filing of their objections.”

4. Penn now says that Plaintiffs were mistaken, *i.e.*, that [REDACTED] were *not* among the students who filed objections to the productions of their education records. If

¹ In an abundance of caution, Plaintiffs have redacted two student names from one of its emails. If the Court believes these redactions are improper, Plaintiffs will re-file Ex. A without redactions.

that is true, however, then it follows that [REDACTED] were among the Penn students who did *not* file objections in response to the FERPA Notices sent to them by Penn counsel at Plaintiffs' request. In that event, there is no question that their admission files and parent-donor communications should be promptly produced.²

5. Penn counsel is also upset that Plaintiffs cited recent news articles to demonstrate the broad influence that Penn donors clearly exert over their school. Penn says those reports are not "relevant." Plaintiffs will leave that determination to the Court.

6. Finally, in a comment that goes beyond the purported purpose of Penn's "Response," Penn states that "the only donations Plaintiffs can muster occurred *after* the students at issue were admitted to Penn and thus did not influence the admissions process." Penn Ex. 1 ¶ 3 (emphasis in original). Penn's statement ignores the fact that time and again Plaintiffs have told this Court that wealth favoritism occurs when one of the Defendants "consider[s] the donation history or *capacity for future donations* in deciding whether an individual applicant should be admitted." Plaintiffs' Response at 2 (emphasis added). *See also* Oct. 5, 2023 Hearing Tr. 12, 14 (Court referring to "wealth" as a consideration). To put the matter bluntly, when an applicant's family is worth more than a billion (or several hundred million) dollars, a university may choose to admit the student and wait for the donation.

7. Plaintiffs stand by the briefs they have filed as to the objecting and non-objecting students from Penn, Cornell, and Georgetown.

² *See* Plaintiffs' Amended and Renewed Motion to Compel the Production of the Education Records of the Georgetown and Penn Students Who Have Not Filed Objections. ECF 539, 540.

Dated: December 20, 2023

/s/ Robert D. Gilbert

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